

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES

MILLER PLASTIC PRODUCTS, INC.

and

Case 6-CA-266234

RONALD VINCER, AN INDIVIDUAL

*Katherine E. Leung, Esq.*, for the General Counsel  
*Robert Bracken, Esq. (Bracken Lamberton, LLC)*,  
Pittsburg, PA, for the Respondent  
*Benjamin Salvina, Esq. (Murphy Law Group, LLC)*,  
Philadelphia, PA, for the Charging Party

DECISION

STATEMENT OF THE CASE

MICHAEL A. ROSAS, Administrative Law Judge. This case was tried via Zoom virtual technology on March 30-31, 2022. The amended complaint alleges that Miller Plastic Products, Inc. (the Respondent) violated Section 8(a)(1) of the National Labor Relations Act (the Act)<sup>1</sup> by discharging Ronald Vincer, the Charging Party, on March 24, 2020 because he raised health and safety concerns with the Respondent.<sup>2</sup> The Respondent denies that Vincer engaged in protected concerted conduct and asserts that he was discharged for poor performance and violating the Respondent's policies and practices.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, with an office and place of business in Burgettstown, Pennsylvania, is engaged in the manufacture and non-retail sale of plastic machining and fabrication products, where it annually purchases and receives goods valued in excess of \$50,000

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<sup>1</sup> 29 U.S.C. §§ 142-159.

<sup>2</sup> All dates are 2020 unless otherwise indicated.

directly from points outside Pennsylvania. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

### A. *The Respondent's Operations*

The Respondent, located in Washington County, is owned by Donnie Miller. It produces plastic storage products for chemicals, waste water, and drinking water. Those products are used primarily in the pharmaceutical, food, water purification and metal processing industries. Timothy Zeliesko has been the chief operating officer since September 2019. His management duties encompass company finances, policies, operations, health care, and safety. Blake Trenary was plant manager from 2018 to February 2022. He was succeeded by Josh Bonanno, a fabricator, as plant manager. Both Zeliesko and Trenary had the authority to hire, fire and discipline employees.

Approximately 26 to 33 employees work in the Respondent's production facility, which includes a machine shop, fabricating department, and office. They consist of machinists, welders, fabricators, and clerical and sales staff. Plant employees work at eight-foot long tables, most of which are adjacent to each other. Two of those employees, Vincer and James Boustead, are at the center of this dispute.

### B. *Ronald Vincer*

Vincer, an experienced welder, was hired as a fabricator in 2015. For much of his tenure, the managers considered Vincer to be highly skilled employee who performed excellent work. However, Vincer was also very social and would talk with other employees at their work stations, especially Boustead. Casual discussion among employees while they worked was commonplace and accepted by management, which wanted employees to "enjoy themselves at work."<sup>3</sup> By 2019, however, Vincer began to experience marital problems. Trenary was supportive, accommodating his schedule, allowing him to come to work late, leave at lunch to pick up his child, or leave work for various reasons.<sup>4</sup> Zeliesko also counseled Vincer periodically about performance deficiencies, late attendance, excessive talking, and distracting coworkers. He was also counseled about talking on his cell phone.<sup>5</sup> On March 5, Miller counseled Vincer and Boustead about excessive talking and production times. However, Vincer was never issued a warning by Trenary, Zeliesko, or Miller.<sup>6</sup>

<sup>3</sup> Zeliesko conceded that he supported the practice of employees talking with one another while they worked. (Tr. 46-47.)

<sup>4</sup> Boustead confirmed that Trenary was supportive and consistently accommodated Vincer's needs. (Tr. 172-173, 221.)

<sup>5</sup> Vincer was a credible witness, testifying spontaneously and readily admitting his shortcomings. Although he did not refute the testimony of Zeliesko, Trenary, and Boustead that his conversations distracted employees others, there is a scant evidence that his production diminished as a result. (Tr. 46, 96, 140, 172.). He was counseled about his behavior by Trenary, Zeliesko and Miller, and warned by Miller on March 5. However, I do not credit the hearsay testimony of Bonanno, the current plant manager, on this point since he never supervised Vincer. (Tr. 284-85.)

<sup>6</sup> The weight of the credible evidence indicates that undocumented verbal warnings, including the one

Boustead, a welder/fabricator who worked at the table adjacent to Vincer, has been employed by the Respondent since 2018. When he started, Vincer trained him in the plastic fabrication process. Vincer and Boustead became close friends and spoke frequently at work, especially in the beginning. In addition, Vincer often visited Boustead's home and Boustead's wife provided child care for Vincer's child.

### *C. The Respondent's Disciplinary Policies and Practices*

The Respondent's Employee Handbook recites its workplace rules and is distributed to all employees. It includes the following pertinent provisions:

#### STANDARDS OF CONDUCT

Each employee has an obligation to observe and follow MPPI policies and to maintain proper standards of conduct at all times. If an individual's behavior interferes with the orderly and efficient operation of a department, corrective disciplinary measures will be taken.

Disciplinary action may include a verbal warning, written warning, suspension and/or discharge. The appropriate disciplinary action imposed will be determined by the corporation. MPPI does not guarantee that one form of action will necessarily precede another. nongenuine

The following may result in disciplinary action, up to and including discharge, Violation of the MPPI policies or safety rules; insubordination; unauthorized or illegal possession, use or sale of alcohol or controlled substances on work premises, during working hours, while engaged in corporation activities or in corporation vehicles; unauthorized possession, use or sale of weapons, firearms or explosives on work premises; theft or dishonesty; physical harassment; sexual harassment; disrespect toward fellow employees, visitors or members of the public; poor attendance or poor performance; use of cell

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by Miller on March 5, were actually a form of counseling. As Zeliesko described it when asked whether he ever issued Vincer a "verbal warning," he replied that he "communicated verbally to him in the plant about his distractions and not following company policy and distracting other employees." (Tr. 46, 223, 262-266.) Moreover, I did not give any weight to three dubious "Employee Warning Report" forms reflecting warnings allegedly issued to Vincer on June 28, 2019, September 4, 2019, and January 15, 2020 (GC Exh. 5-7.) With the exception of a December 2, 2019 warning signed by Trenary that was issued to, but not signed by, Christopher Cowger (GC Exh. 41.), the Respondent's disciplinary practice would be to have disciplinary forms signed by the employee and supervisor. (GC Exh. 14-15, 27-30, 32-39; R. Exh. 20.) In contrast, none of the three warning forms allegedly issued to Vincer were even signed by a supervisor. Nor was he ever informed that a warning would be placed in his file. (Tr. 248-250.) The January 15 warning was allegedly issued to both Vincer and Boustead. Strangely, however, Zeliesko wrote that he "moved [Boustead] to a different work station" on Vincer's form but *not* on Boustead's form. (GC Exh. 5, 16.) Moreover, Boustead's credited testimony further undermined the reliability of those documents. Boustead, unclear about the timing of his move, confirmed his past recollection, as recorded in his Board affidavit, that it "was before" or "not long before" Vincer's termination on March 24. (Tr. 210-211.)

phones during work hours.<sup>7</sup> These examples are not all inclusive. We emphasize that discharge decisions will be based on an assessment of all relevant factors.

5 NOTHING IN THE POLICY IS DESIGNED TO MODIFY OUR EMPLOYMENT-AT-WILL POLICY.

In addition to the Employee Handbook, the Respondent requires employees to sign a separate document of Company Policies. That form, which Vincer signed and acknowledged on February 2, 2015, supplements the disciplinary provision in the Employee Handbook.<sup>8</sup>

10 I. Cause for discharge or discipline: Causes for discharge or disciplinary action may be, but are not limited to the following categories.

- 15 A. Bringing in or consuming intoxicants on company premises.
- D. Reporting for work under the influence of alcohol.
- E. Endangering the health or safety of himself or others.
- F. Neglect of duty.
- G. Willful destruction or removal of company's or another employee's property.
- H. Refusal to comply with advertised rules.
- 20 I. Dishonesty.
- J. Sleeping on duty.
- K. Failure to report for work without good reason/ Failure to report off.
- L. Disorderly conduct.
- M. Gambling on company premises.
- 25 N. Insubordination.
- O. Zero illegal / non-prescribed drug tolerance.

II. Discharge and discipline

- 30 A. Management may take several steps for discharge or disciplinary action of any severity on the basis of the seriousness of the case of the employee's past record.
- B. Where such severe action is not considered necessary, the following procedures will apply.
  - 1. The employee shall receive a verbal warning and explanation.
  - 2. A second offense in the same category shall warrant a written reprimand stating the
  - 35 nature of the offense.
  - 3. A third offense in the same category shall warrant a written reprimand and three scheduled days of disciplinary time off.
  - 4. Further offenses in the same category shall warrant discharge.
  - 5. Written reprimands will become part of the employee's permanent record.
  - 40 6. Demotion will not be used as a disciplinary measure.

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<sup>7</sup> There are signs throughout the plant prohibiting the use of cell phones in work areas. (Tr. 222.)

<sup>8</sup> Both Zeliesko and Trenary testified that employee discipline should be based on violations of the Respondent's policies, either in the handbook or the list of company policies, except in circumstances where the handbook and Respondent's policies fail to anticipate a particular type of misconduct. (Tr. 36, 139-140.)

Policy violations are to be documented on the “Employee Warning Report” form, and placed in the employee’s file. The Respondent’s disciplinary protocol requires that form to be completed by the front line supervisor with as much detailed information about the infraction as possible, and then signed by the issuing supervisor.<sup>9</sup> That supervisor is usually the plant manager. Zeliesko and Trenary typically coached employees, but issued and documented warnings if warranted based the nature and/or frequency of the conduct. In severe instances, an employee could be suspended or terminated.<sup>10</sup>

### C. *Pennsylvania Responds to the COVID-19 Pandemic*

As of March 6, 2020, there were two presumed positive cases of the COVID-19 coronavirus disease in Pennsylvania. On that day, Governor Tom Wolf issued an Order proclaiming the existence of a disaster emergency in Pennsylvania as a result of the COVID-19 pandemic (the pandemic) and committing state government’s emergency resources and assistance, and the emergency responses of state agencies and county and municipal governments.

On March 16, Governor Wolf announced state-wide mitigation efforts to combat the pandemic, effective March 17, including a stay-at-home-order, and the closure of schools, dine-in facilities including restaurants and bars, and non-life-sustaining business. Life sustaining businesses, however, were not yet identified:

#### THE GOVERNOR OF THE COMMONWEALTH OF PENNSYLVANIA REGARDING THE CLOSURE OF ALL BUSINESSES THAT ARE NOT LIFE SUSTAINING

WHEREAS, the World Health Organization and the Centers for Disease Control and Prevention (“CDC”) have declared a novel coronavirus (“COVID-19”) a “public health emergency of international concern,” and the U.S. Department of Health and Human Services (“HHS”) Secretary has declared that COVID-19 creates a public health emergency; and

WHEREAS, as of March 6, 2020, I proclaimed the existence of a disaster emergency throughout the Commonwealth pursuant to 35 Pa. C.S. § 7301(c); and

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<sup>9</sup> Zeliesko, called as an adverse witness by the General Counsel, was not a credible witness. He seldom answered a question directly and was evasive when asked about the Respondent’s disciplinary practices. When asked if there were any, he asked, “do you have a scenario? Typically, if something wrong, try to coach to correct, if repetitious, take corrective action if necessary because it costs money to retrain employees if possible. Not documented if see for first time, repeats – try warning first, every scenario is unique, can’t quantify how many repetitions before escalating the discipline.” (Tr. 36-37, 47, 104-105.)

<sup>10</sup> Trenary also lacked credibility. Although no longer employed by the Respondent, his roommate still works for the company. Most importantly, he testified that he issued verbal warnings to Vincer and other employees that were not documented. However, the Respondent’s protocol required supervisors to document violations. On the other hand, Trenary was a sympathetic, accommodating manager who had a good relationship with his subordinates. As such, it is clear that his communications with employees about undocumented rules violations amounted to coaching. (Tr. 136-140.)

WHEREAS, I am charged with the responsibility to address dangers facing the Commonwealth of Pennsylvania that result from disasters. 35 Pa. C.S. § 7301(a); and

5 WHEREAS, in addition to general powers, during a disaster emergency I am authorized specifically to control ingress and egress to and from a disaster area and the movement of persons within it and the occupancy of premises therein; and suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, and combustibles. 35 Pa. C.S. § 7301(f); and

10 WHEREAS, in executing the extraordinary powers outlined above, I am further authorized during a disaster emergency to issue, amend and rescind executive orders, proclamations and regulations and those directives shall have the force and effect of law. 35 Pa. C.S. § 7301(b); and

15 WHEREAS, in addition to my authority, my Secretary of Health has the authority to determine and employ the most efficient and practical means for the prevention and suppression of disease. 71 P.S. § 532(a), 71 P.S. 1403(a); and

20 WHEREAS, these means include isolation, quarantine, and any other control measure needed. 35 P.S. § 521.5.

25 NOW THEREFORE, pursuant to the authority vested in me and my Administration by the laws of the Commonwealth of Pennsylvania, I do hereby ORDER and PROCLAIM as follows:

#### Section 1: Prohibition on Operation of Businesses that are not Life Sustaining

30 All prior orders and guidance regarding business closures are hereby superseded.

35 No person or entity shall operate a place of business in the Commonwealth that is not a life sustaining business regardless of whether the business is open to members of the public. This prohibition does not apply to virtual or telework operations (e.g., work from home), so long as social distancing and other mitigation measures are followed in such operations.

40 Life sustaining businesses may remain open, but they must follow, at a minimum, the social distancing practices and other mitigation measures defined by the Centers for Disease Control to protect workers and patrons. A list of life sustaining businesses that may remain open is attached to and incorporated into this Order.

45 Enforcement actions will be taken against non-life sustaining businesses that are out of compliance effective March 21, 2020, at 12:01 a.m.

*D. Employees Talk About the Pandemic at Work*

By March, the looming pandemic was a frequent topic of conversation within the plant. Trenary and Zeliesko periodically updated employees about any developments, and measures were taken to implement social distancing, sanitize work and common areas, and provide employees with face masks.<sup>11</sup> Vincer and Boustead spoke about the virus every day. Boustead was especially at high risk for serious illness during the pandemic. He has had his spleen removed, suffered a collapsed lung, and his grandmother, who lives next door, has chronic obstructive pulmonary disease. Vincer had other worries, including the possibility that the federal government would declare martial law, order a lockdown, and other gloomy scenarios. At the same time, however, Vincer vented his about reluctance to continuing to work. He believed that the Respondent was not an essential or life-sustaining business and should close down, like other companies were doing. Vincer also communicated that belief to other employees, including Larry Pierson, Josh Bonanno, Mike Miller, and Christopher Cowger. He even suggested to Boustead that someone should contact the authorities and tell them that the Respondent was still open.<sup>12</sup>

*E. The March 16 Meeting*

On March 16, after Governor Wolf issued his latest proclamation, Zeliesko convened an all-hands meeting in the center of the plant. Zeliesko opined that the Respondent would be classified as an essential business and able to stay open because its plastic products are used for food and purified water. He outlined the health and safety measures taken by the company in accordance with guidance from the Center for Disease Control. They included instructing employees to wash their hands, not touch their face, cover their mouths, clean and sanitize work stations, use sanitizer wipes and hand sanitizer provided throughout the plant, and avoid gatherings outside of work. The Respondent also purchased a fogger to sanitize the plant after hours.

Prior to this meeting, employee conversations relating to the pandemic revealed interest as to whether the Respondent would be classified as an essential business. At this meeting, employees asked about the company's sanitization and other health and safety efforts, the process by which businesses would be determined to be essential, and Zeliesko's basis for believing that the company would be classified as essential. Zeliesko explained that he was working hard to ensure that the Respondent was designated as an essential or life-sustaining business and, thus, able to continue operating. Vincer, clearly upset, disagreed, asserting that the Respondent did not have the proper precautions in place and the employees should not be working for the time being. Zeliesko replied that the Respondent was a small company and the employees needed to keep working until they got further clarification from the government.<sup>13</sup>

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<sup>11</sup> Although there is no direct evidence that Trenary and Zeliesko were aware of specific discussion among employees about the pandemic, they communicated with them about it. As Zeliesko recalled, "I think that the alarm started when everybody started hearing about COVID." (Tr. 39-41, 147-148.)

<sup>12</sup> Boustead, still in the Respondent's employ, was the most credible witness in this case. His testimony was spontaneous, his demeanor was calm and consistent, and he was genuinely receptive to inquiry from both sides throughout. (Tr. 199-208.)

<sup>13</sup> Zeliesko denied that anyone, including Vincer, raised any concerns about the Respondent's safety measures during his presentation. (Tr. 79-80.) Vincer's credible assertion to the contrary, however, was corroborated by Trenary and Boustead. Boustead also added that "[t]here were several people more than

After the March 16 meeting, Boustead approached Trenary to discuss his apprehension about his health risks. Trenary, familiar with Boustead's health issues, assured him that they would make anyone that came into contact with COVID-19 stay home, follow proper procedures and enforce social distancing. Boustead, whose son also works for the Respondent, was satisfied by the explanation.

*F. The Respondent's March 18 PowerPoint Presentation*

On March 18, Zeliesko prepared a PowerPoint presentation for employees and ran it repeatedly on a 60-inch screen in the front of the plant. The slides included sanitary precautions and tips to avoid the spread of coronavirus. The PowerPoint slides also updated employees that certain non-essential businesses were ordered to close on March 18 and the number of confirmed COVID-19 cases. The Respondent was not among them. In the PowerPoint slides, Zeliesko also updated employees about House Bill 6201, which pertained to child care, as an employee had asked about that issue. The PowerPoint urged employees to ask questions and included information about the number of confirmed COVID-19 cases around the world. As of March 17, there was one confirmed case of COVID-19 in Washington County. The final slide included the bulletin from the Governor's office indicating that essential services, including industrial manufacturing, were allowed to remain open.

*G. The Respondent is Classified as an Essential Business*

On March 19, 2020, Governor Wolf issued an Order prohibiting the operation of non-life sustaining or non-essential businesses. That evening, Zeliesko emailed the Respondent's managers and supervisors that "We are still open! Friday." It read:

Despite this new ruling, we will be open tomorrow for business as usual. It doesn't go into effect until midnight Friday (Saturday). They are listing plastic manufacturing "Ok to open physical location."

Tomorrow we will have to determine if we fall under the plastic manufacturing category. Seeing that plastic manufacturing is actually the making of the raw materials. They have closed metal fabricating shops and metal machining shops. So if any employees reach out to you please ensure them that tomorrow is business as usual. And nothing is changing until we have a definite answer tomorrow during the day.

Any conversations with employees please keep it short and brief that they have listed plastic manufacturing still essential unless we find out otherwise. Which at this time we have not. Thank you very much.

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Vincer stating that we were not an essential business." (Tr. 149-151, 173-174, 203-210, 226-229, 237-275). Boustead did not recall whether Vincer spoke out at the mid-March all-hands meeting. However, he confirmed that his past recollection, as accurately recorded in his Board affidavit, was that Vincer did express his opinion at that meeting. (Tr. 202-206, 226-227.)



*H. Zeliesko Updates Vincer on March 20*

The March 19 Order did not elaborate as the types of business considered to be life-sustaining or essential. That clarification came on March 20, when the Governor’s Office identified “plastics product manufacturing” as an essential business sector. On the same day, Zeliesko met with and conveyed that information to the employees. Employees did not voice any concerns regarding that announcement. After the meeting, Zeliesko approached Vincer and showed him the list of essential business services and sectors. Vincer did contest the accuracy of that information or otherwise express any concerns at the time.

On March 24, Zeliesko submitted a “COVID-19 Closure Exemption Request Submission” to the Governor’s Office. In pertinent part, Zeliesko explained that “I know Plastic Product Manufacturing is on the list to be OK to operate. But for the comfort of knowing that we are operating within the guidelines correctly we are applying for the waiver.” On March 29, the Pennsylvania Department of Community and Economic Development replied, in pertinent part:

Based on the information submitted in your request, Governor Wolf and Secretary Levine’s recent orders calling for the closure of non-life-sustaining businesses do not appear to require your business to close at this time. Certain operations of your business described in your request appear to be within the life-sustaining business sector that contributes to the health and safety of Pennsylvania.

*I. Vincer’s March 23 Conversation with Zeliesko*

On March 18, Pierson received a telephone call from his wife, who works at a nursing home, that she was sent home with flu-like symptoms. When Pierson shared that information with Vincer, the latter suggested Pierson inform Trenary. Pierson was sent home and was out of work on March 19 and 20. Vincer was off on March 20, but when he returned to work on March 23, Boustead informed him that Pierson returned to work on March 20. Concerned about the Respondent’s COVID protocol, Vincer stopped Zeliesko when he saw him and asked what the requirements were for employees to return to work after having COVID-19 or being exposed to COVID-19. Zeliesko replied that he would have to get back to him. Vincer also asked Zeliesko if he thought the company should be open and operating. Zeliesko replied that the Respondent believed it was a life-sustaining business based on the information provided by government agencies. He stated that the Respondent would continue operating and as soon as more information was obtained, it would be communicated to the employees. Vincer griped briefly and the conversation ended.<sup>14</sup>

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<sup>14</sup> Zeliesko vaguely recalled the conversation as occurring within “a day or so” after the March 16 meeting (Tr. 48-49, 80.). The credible evidence suggests otherwise. Vincer’s detailed testimony regarding this encounter was corroborated by Boustead’s testimony that Pierson was absent from work two times that year (March and July) because of concern that his wife might have been exposed to COVID. (Tr. 208-209, 224-225, 229, 244-245-246.) On rebuttal, Zeliesko denied, unconvincingly, that he spoke with Vincer on March 23, and attempted to explain Pierson’s absence from work in March to “vacation time . . . for different reasons.” (Tr. 276-277.)

After his conversation with Zeliesko Vincer went and spoke with Boustead. He urged Boustead to speak with Trenary or Zeliesko about his own health vulnerabilities and the protocols the Respondent was putting in place when people were sick or exposed to COVID-19. Boustead ultimately went and spoke with Trenary about this issue and asked to be notified, because of his high-risk status, if anyone in the plant was ill. Trenary assured Boustead that he would keep him informed about any active cases of COVID-19 in the plant. Boustead did reference the Respondent's status as a life-sustaining business or needing to close its facility for employee safety during this conversation.<sup>15</sup>

#### J. Vincer's Termination

By March 24, a confluence of events would lead to Vincer's termination. By the time Vincer expressed his concerns to Zeliesko on March 23 about the business remaining open, the Respondent was experiencing financial repercussions from the COVID-19 pandemic. The Respondent accrued a net loss of \$34,548.71 for the month of January, while the same period in January 2019 resulted in a net income of \$125,450.39 – a decrease of \$160,314 for the year. The onset of COVID-19 forced the Respondent to change its credit terms with its customers. The Respondent also suspended an incentive bonus program in March because of financial concerns.<sup>16</sup>

On March 27, the *Coronavirus Aid, Relief and Economic Security Act (the CARES Act)* was signed into law in response to the economic repercussions from the COVID-19 pandemic.<sup>17</sup> Section 1102 of the Cares Act provided for relief to adversely impacted businesses by establishing a Payment Protection Program (PPP). Under the PPP, a business such as the Respondent would be provided with a Small Business Administration (SBA) loan to cover payroll and certain operating expenses. Loan awards under the PPP, however, were subject to certain conditions. One such condition was an acknowledgment that funds “to retain workers and maintain payroll” would be used for those purposes. *CARES Act* Section 1102 (a)(1)(G)(i)(II).

In March, the Respondent were concerned about needing to take a PPP loan and the impact terminating employees could have on the loan being forgiven. The Respondent took out two PPP loans during the COVID-19 pandemic. These considerations would become a factor in the termination of four employees, including Vincer, during the last week in March.<sup>18</sup>

On March 24, Trenary observed Vincer text messaging on his cell phone and reported it to Zeliesko. Almost immediately, and without further investigation or evaluation of Vincer's work efficiency, production, or impact on company profit, they went to Miller. Trenary and Zeliesko informed Miller of the latest texting episode and recommended termination. Miller agreed.<sup>19</sup>

<sup>15</sup> This finding is based on Vincer's credible testimony. (Tr. 245-246.)

<sup>16</sup> R. Exh. 14.

<sup>17</sup> Pub. L. 116-136.

<sup>18</sup> Although comparable information for February was not provided, the reliability of this financial data, and the Respondent's financial concerns in general, were not disputed. (R. Exh. 14-15; Tr. 106-111, 190-120.)

<sup>19</sup> Zeliesko and Trenary denied that Vincer's expressed concerns to Zeliesko were mentioned on May 24, much less the reason for the decision to terminate him. Neither was credible on that point. Zeliesko testified that Vincer posed a safety hazard to his coworkers. However, Zeliesko could not point to a single

Shortly thereafter, Miller, Zeliesko, and Trenary informed Vincer that he was terminated for poor attitude, talking, and lack of profit. Upon being told that he was terminated, Vincer stated that there were people worse than or slower than him and nodded towards Cowger. Vincer then packed up his tools and left.<sup>20</sup>

The Respondent did not give Vincer anything in writing when he was terminated on March 24. On June 4, Trenary finally did so by email: “To whom it may concern: This is an official employment termination letter for Ronald Vincer. He was let go from [the Respondent] on March 24, 2020.”<sup>21</sup>

#### *K. Vincer’s Unemployment Compensation Claim*

After being terminated, Vincer went home and immediately completed an application for unemployment compensation benefits. On his application, Vincer listed the rules violations that led to his discharge on March 24 as: “[too] much talking to coworkers, lack of profits and poor attitude.” In response to a question as to whether the discharge was for a specific incident, Vincer stated that he was discharged on March 5 because “was talking to coworker at the end of the shift during . . .” [end of answer cut off].<sup>22</sup>

#### *M. The Respondent’s Application of Discipline*

##### *1. Discharges During the March 24-31 Period*

The Respondent also terminated three other employees during the last week of March: Christopher Cowger – March 24; Eric Saloom – March 25; and David Onuska – March 31.

Cowger, a fabricator, had been warned and suspended several times for costly mistakes. Cowger received his first warning on August 31, 2017. On October 4, 2017, Cowger was warned and suspended for three days for repeatedly being “careless towards quality of work resulting in bad parts.” On December 3, 2018, Cowger was warned after arriving one hour late for work and “holding up delivery on a project.” He was also warned that the next violation would result in a

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incident in which an employee had been injured or nearly injured as a result of Vincer’s conduct. (Tr. 50, 53.) Trenary testified similarly, that the decision to discharge Vincer was based upon his excessive talking during working time, and that there was no particular inciting incident that prompted Respondent to discharge him on March 24. (Tr. 153-55.)

<sup>20</sup> I based this finding on the credible testimony of Vincer over the inconsistent, shifting positions taken by the Respondent for his discharge. (Tr. 52-53, 56-60, 97, 156-157, 246-247; GC Exh. 40.)

<sup>21</sup> In its position statement, the Respondent claimed to have discharged Vincer because he talked too much, distracted other employees, and used his cell phone in the plant, and because these behaviors could lead to a slowdown in plant efficiency. (GC Exh. 25-26, 40.)

<sup>22</sup> The Respondent highlights the fact that Vincer, contrary to his testimony, did not state on the unemployment application that *he* believed he was terminated because he raised health and safety concerns related to COVID-19. (R. Exh. 16; Tr. 245-245, 251-256, 275.) Nor did Vincer produce or preserve any emails or text messages evidencing *his* belief that he was discharged due to COVID-related complaints. (Tr. 258-262.)

three-day suspension. On December 21, 2018, Cowger was warned for carelessness, disobedience, failure to follow instructions, unsatisfactory work quality, and violating company policies. On December 2, 2019, Cowger was warned after being on his cell phone during work time. Trenary told him to put it away. On March 24, Cowger was terminated in writing “due to poor performance that does not meet the standard for [the Respondent].”<sup>23</sup>

Saloom was terminated the next day. Employed for two years as a salesperson, Saloom was discharged based on productivity. In 2019, management met with him three times, but he was never issued a warning.<sup>24</sup>

Onuska was discharged six days later. Employed for four years as a fabricator, Onuska received numerous warnings and suspensions between 2018 and 2020. He was warned about excessive absenteeism (18 days with no excuse) on July 23, 2018. In November 2019, Zeliesko met with Onuska to discuss his detailed analysis of Onuska’s missed and late days for the year. That analysis calculated the additional cost incurred by the company – \$6,903. On January 24, Onuska was warned and suspended for one week for missing or being late seven out of 17 work days. He was terminated based on the Respondent’s determination that his poor attendance record resulted in a lack of productivity due to the delayed completion of ongoing jobs.<sup>25</sup>

## 2. Additional Disciplinary Incidents

The Respondent’s approach to employee discipline before and after Vincer’s termination has varied. Shawn Peterson, a machinist, was discharged on November 19, 2019 for slow production times and failing to meet company standards. He had no prior history of warnings. In deciding to discharge Peterson, Zeliesko calculated the number of jobs that Peterson’s machine could complete in a day and the number of jobs Peterson completed in a day. The difference indicated the amount of time Peterson wasted.<sup>26</sup>

Marcus Quinones, a fabricator, was terminated on October 8. His disciplinary record consisted of four prior written warnings. In December 2018, Quinones was disciplined for improper use of a tool. He received a written warning, and signed to acknowledge receipt of the discipline. In May 2019, Quinones was disciplined for excessive tardiness. This discipline was issued in writing, and signed by Quinones and Trenary. On October 1, Quinones was warned that his “[n]ext infraction of any kind will result in termination” after purposely spiking his tool on a tank he was working on. On October 6, he was issued another warning for using a grinder on a plastic tank after being told not to do so. In addition, he was cited for building a tank that was significantly out of square that it would be impossible to use and required additional resources to

<sup>23</sup> Zeliesko credibly testified that Cowger regularly violated the cell phone use policy and cost the company about \$3,000 in repairs on one occasion. (GC Exh. 27-29; Tr. 96-101.)

<sup>24</sup> Although he produced no documentation to support his assessment that Saloom was “an unproductive sales person” and “consistently missed his goals,” Zeliesko’s assessment was not disputed. (Tr. 101.)

<sup>25</sup> Zeliesko did not testify as to the performance of a similar analysis regarding Onuska’s performance in the week leading to his termination. (GC Exh. 13-15; Tr. 67-69, 168-171.)

<sup>26</sup> Although the timeframe is unclear, Zeliesko conceded that he based Peterson’s discharge, at least in part, on his calculations of the machine runtimes. (GC Exh. 13, 18; R. 14.; Tr. 70-72, 101-104.)

fix the mistake. Quinones was given the warning to sign and remain employed. Although he signed the three previous warnings, Quinones refused to sign and became enraged. He was terminated two days later.

5 Jason Hedrick, a laborer, was terminated on January 12, 2021 for “talking back to [his] superior and not following company policy.” His disciplinary record consisted of four prior written warnings, all of which he signed. In February 2019, Hedrick received a final warning for intentionally hiding the keys to the delivery truck, making the delivery driver late for a drop-off. In April 2019, he was warned for carelessness after failing to include all the parts in an order before it was shipped. As a result the company incurred additional costs in getting those parts to the customer. In November 2019, Hedrick received a final warning for dropping a tank off of another employee’s workstation and damaging it. In November, 2020, he was suspended for one day for climbing on the trailers of trucks picking up orders after being told multiple times not to do that.

15 In contrast, Boustead, having been warned and counseled on several occasions regarding his talking and productivity, avoided termination as the Respondent laid off employees in March. More recently, on January 11, 2022, he was issued a written warning after a lengthy disciplinary meeting for failing to record the time spent on completed jobs. The oversight created a billing problem on those jobs, and interfered with the Respondent’s ability to provide accurate quotes for future jobs. Boustead remains in the Respondent’s employ.

## LEGAL ANALYSIS

### I. APPLICABLE LAW

25 Under Section 7 of the Act, employees have the right to engage in concerted activities for the purpose of “mutual aid or protection.” *Alstate Maintenance, LLC*, 367 NLRB No. 68 (2019). “Section 8(a)(1) enforces this guarantee by deeming it ‘an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise’ of their § rights.” *MCPc, Inc. v. NLRB*, 30 813 F.3d 475, 482 (2016). Under *Wright-Line*, 251 NLRB 1083, 1089 (1980), 1st Cir. 1981), cert. denied 455 U.S. 989 (1982), in order to establish such a violation, the General Counsel bears the initial burden of establishing that an employee’s union or other protected concerted activity was a motivating factor in the employer’s adverse employment action. *Fluor Daniel, Inc.*, 304 NLRB 970, 970 (1991). The General Counsel meets this burden by proving that (1) the employee engaged in Section 7 activity, (2) the employer knew of that activity, and (3) the employer had animus against the Section 7 activity, which must be proven with evidence sufficient to establish a causal relation between the discipline and the Section 7 activity.

40 Proof of union animus can be based on direct evidence or can be inferred from circumstantial evidence. *Tubular Corp. of America*, 337 NLRB 99 (2001) (antiunion motivation inferred from circumstantial evidence of, among other things, employer's deviation from past practice). The Board does not require the General Counsel to produce direct proof of animus under *Wright Line*. Animus toward an employee’s protected activity may be inferred from the pretextual nature of an employer’s proffered justification, as long as the surrounding facts support such an inference. *Electrolux Home Products*, 368 NLRB No. 34 slip op. at 3 (2019). Similarly,

when an employer presents shifting defenses for its actions, this too may be evidence of unlawful motive. *Taft Broadcasting Co.*, 238 NLRB 588, 589 (1978).

Once the General Counsel sustains her initial burden, the burden shifts to the employer to demonstrate that it would have taken the same action even in the absence of the protected activity. *Manor Care Health Servs.–Easton*, 356 NLRB 202, 204, 225–26 (2010), *enforced per curiam*, 661 F.3d 1139 (D.C. Cir. 2011) (citations omitted).; *Wright Line*, 251 NLRB at 1089.

## II. VINCER’S PROTECTED AND CONCERTED CONDUCT

### A. Vincer’s Initial Concerns

In *Myers Industries (Myers I)*, 268 NLRB 493 (1984), and *Myers Industries (Myers II)* 281 NLRB 882 (1986), the Board held that "concerted activities" protected by Section 7 are those "engaged in with or on the authority of other employees, and not solely by and on behalf of the employee himself." Generally, conduct becomes concerted when it is "engaged in with or on the authority of other employees," or when an employee seeks "to initiate or to induce or to prepare for group action." *Meyers II*, 281 NLRB at 887.

Vincer spoke every day with coworkers in March, especially Boustead, regarding the health and safety risks posed to employees and their families by the pandemic. However, conversation during work time was not limited to Vincer and Boustead, his close friend at the adjoining table. It was also a popular topic of discussion among employees throughout the plant. During some of these discussions, Vincer even urged that other employees approach management or complain to unspecified government "authorities" that the Respondent should not be open. Vincer’s conduct was clearly concerted. See *Quicken Loans, Inc.*, 367 NLRB 112 (2019) quoting *Meyers Industries*, 281 NLRB 882, 887 (1986) (*Meyers II*) (concerted activity includes cases "where individual employees seek to initiate or to induce or to prepare for group action, as well as individual employees bringing truly group complaints to the attention of management."). See also *Salisbury Hotel, Inc.*, 283 NLRB 685, 687 (1987) (employee’s call to Department of Labor grew out of employee’s concerted protest of employer’s change in lunch hour policy, and was therefore a continuation of that concerted activity)

Conspiracy talk notwithstanding, Vincer’s conduct was also protected. See *Wabash Alloys*, 282 NLRB 391, 391 (1986) (employees’ discussions of safety concerns or hazards in the workplace are protected concerted activities); *Systems with Reliability, Inc.*, 322 NLRB 757, 757-60 (1996) (employees’ discussion over the toxic effects of methyl ethyl ketone in the workplace and threatening to contact OSHA). The fact that Vincer was outspoken about the threats posed to employees and their families by the pandemic, and was the only employee known to advocate for the Respondent to close, did not negate his Section 7 protections. The activities of a single employee in enlisting the support of fellow employees in mutual aid and protection is as much concerted activity as is ordinary group activity. *Meyers II*, 281 NLRB at 887 (concerted activity includes cases "where individual employees seek to initiate or to induce or to prepare for group action, as well as individual employees bringing truly group complaints to the attention of management."). See also, *Parkview Lounge, LLC d/b/a Ascent Lounge*, 366 NLRB No. 71, slip op. at (2018), *enfd.* 790 Fed. Appx. 256 (2d Cir. 2019 (employee who spoke out to group about

workplace concerns engaged in protected concerted activity). *Wal-Mart Stores, Inc.* 341 NLRB 796, 804 fn. 9 (2004), enfd. 137 Fed. Appx. 360 (D.C. Cir. 2005) (when a complaint is made to improve the working conditions of all employees it is a protected concerted activity), citing *Hanson Chevrolet*, 237 NLRB 584 (1978).

Moreover, the fact that Vincer's efforts included a desire to go home is irrelevant, since the standard for assessing whether the purpose of his conduct was for mutual aid or protection is an objective one. See *Dreis & Krump Mfg. Co. v. NLRB*, 544 F.2d 320, 328 n.10 (7th Cir. 1976) (the purpose, not the motives, of conduct relating to matters of "mutual aid or protection" of employees is relevant). Vincer's understanding as to whether the Respondent was or was not a life-essential business was not actually settled until the Department of Community and Economic Development informed Zeliesko on March 29 that the Governor's closure orders "do "not appear to require your business to close at this time. Certain operations of your business described in your request appear to be within the life-sustaining business sector."

### B. The March 16 Meeting

Group activity was the essence of the Respondent's March 16 all-hands employee meeting. During that meeting, Zeliesko provided employees with assurances regarding the health and safety measures being taken by the company. He also fielded employees' questions as to whether the company's operations qualified as life-sustaining and it would be permitted to remain open. Zeliesko expressed confidence that the company would qualify as essential and assured them that the business would remain open until the government informed it otherwise. Vincer, however, challenged Zeliesko's statements, blurting out angrily that "we shouldn't be working" and voicing concern over the lack of quarantine measures. Vincer's statements, which were heard and responded to by Trenary and Zeliesko, involved all of his coworkers and was inherently concerted since it was an outgrowth of concerns discussed among employees throughout the plant. That no other employee openly agreed with Vincer at the meeting is immaterial because employees need not agree with the message or join in an employee's cause for the communication itself to be concerted. *Fresh & Easy Neighborhood Market, Inc.*, 361 NLRB 151, 153 (2014). Cf. *Bud's Woodfire Oven d/b/a Ava's Pizzeria*, 368 NLRB No. 45 slip op at 6 (2019) (employee's criticism of his restaurant manager's lack of assistance in the kitchen, a matter that employees merely joked about, was not concerted). The other employees' participation in the meeting is sufficient to render his statements inherently concerted, even if none of them agreed with his message.

### C. Vincer's March 23 Discussion with Zeliesko

Vincer did not let the issue go. He continued speaking to Boustead and other employees at work about COVID-19 and his concerns regarding the Respondent's return-to-work procedures for employees who contracted or were exposed to COVID-19. One employee, in particular, Larry Pierson, concerned Vincer because Pierson's wife was believed to have contracted the virus and he had returned to work. On March 23, Vincer stopped Zeliesko as he walked by his table and inquired about the company's return-to-work protocol. Vincer also suggested that the company should close. Zeliesko replied that the Respondent would remain open until told otherwise by the government. Vincer briefly grumbled and the conversation ended.

The Board has long recognized that where an employee's individual action is a direct outgrowth of an earlier group discussion of a shared concern or grievance, the subsequent individual action is still protected because of its relation to the group discussion. *Mike Yurosek & Son, Inc.*, 306 NLRB 1037, 1038-39 (1992) (four employees' individual decisions to refuse overtime work were logical outgrowth of concerns they expressed as a group over new scheduling policy), supplemented by 310 NLRB 831 (1993), enfd. 53 F.3d 261 (9th Cir. 1995). The very nature of Vincer's concern – that nonexistent or inadequate return to work protocols would allow the virus to spread within the plant – inherently relates to the health and safety of every employee at that location. See *Trayco of South Carolina, Inc.*, 297 NLRB 630 (1990), enf. denied, 927 F.2d 597 (4th Cir. 1991); *Aroostook County Regional Ophthalmology Center*, 317 NLRB 218 (1995), enf. denied in part on other grounds, 81 F.3d 209 (D.C. Cir. 1996).

Vincer's statements to management and conversations with coworkers was targeted at amassing employee support or spurring employees to speak up about a genuine safety concern for the purpose of changing the conditions in Respondent's facility for the benefit of every employee in the plant, as opposed to "mere griping." *Mushroom*, 330 F.2d 683, 685 (3d Cir. 1964); *NLRB v. Datapoint Corp.*, 642 F.2d 123, 128-29 (5th Cir. Unit A 1981).

#### *D. The Respondent's Motivation for Terminating Vincer*

##### (1) The Timing

Vincer was discharged one day after he stopped Zeliesko to complain about the Respondent's return-to-work protocol and express dismay, yet again, at the Respondent's insistence on staying open. The action was triggered after Trenary told Vincer to get off his cell phone and then observed Vincer walk away from his table as he continued talking on his cell phone. Trenary immediately reported it to Zeliesko, and the two of them went to Miller and recommended Vincer's termination.

Vincer, one of the Respondent's most skilled welders, was issued one warning (March 5) over the course of five years with the Respondent. Talking between employees while working was tolerated by supervisors, and Vincer certainly liked to talk with coworkers during the entire time he was employed by the Respondent. He spoke ever work day with Boustead, his close friend who worked at the table adjacent to his. There were occasions during work time when he would be talking with Boustead or other coworkers and not be working, and Trenary or Zeliesko would counsel him to get back to work. On March 5, Miller warned him about excessive talking and his production.

The timing of Vincer's discharge also occurred in the midst of an economic downturn and as the Respondent pondered who to keep on its payroll in order to get funding from the PPP program. The Respondent was aware that the PPP program guidelines required it to retain employees for whom it sought payroll reimbursement. In that regard, the Respondent also laid off three other employees that week, an action clearly related to the staffing decisions that it needed to make prior to entering the PPP program. However, as explained below, its decision to include Vincer in that mix was partially motivated by his protected concerted conduct in advocating for the Respondent to close shop and implement a quarantine policy.



## (2) The Lack of An Investigation

Vincer's discharge uncharacteristically lacked any investigation. In contrast to Zeliesko's investigations of other terminated employees, Vincer was hurriedly shown the exit without so much as a termination letter. Nor did Zeliesko or Trenary document Vincer's production deficiencies as was done for Onuska and Peterson before they were discharged for the same reason. Moreover, the presentation of unreliable documents as evidence suggests the subsequent papering of Vincer's file in an effort to justify the Respondent's motive for terminating him.

## (3) Shifting Defenses

The Respondent presented inconsistent reasons for terminating Vincer. In contesting his application for unemployment benefits, the Respondent claimed that Vincer was discharged due to his inability to meet production times. During the investigation of this case, however, the Respondent asserted that Vincer was terminated for excessive talking, using his cell phone during work time, both of which could lead to a slowdown in the plant. Finally, at the hearing, the Respondent added two additional grounds – the safety risks posed by his conduct, and the Respondent's financial condition. As previously noted, the Respondent's financial condition was a factor in the decision to discharge four employees, including Vincer, between March 24 and 31. The problem there was the decision to include Vincer in that group.

## (4) The Respondent's Disciplinary Practices

Vincer's disciplinary history was relatively bare in comparison to that of other employees who were who received numerous disciplines or were terminated on the basis of productivity, disrespecting a supervisor or manager, safety, or cell phone use: Onuska, Cowger, Hedrick, Quinones, and Boustead. Each of these employees were issued written warnings signed by the issuing supervisor, and in all but one case, by the employee. They were all given second or more chances for misconduct, some of which was malicious, intentional and/or cost the company money. More recently, Boustead, who remains employed, was given yet another chance after he failed to document his work on certain jobs, which hampered the Respondent ability to quotes future jobs.

In conclusion, the facts and circumstances indicate that the Respondent's decision to terminate Vincer, one of its most skilled welders, was based on animus towards his protected concerted conduct on March 16 and 23. *United States Coachworks, Ind.*, 334 NLRB 118, 122 (2001); *NLRB v. Henry Colder Co., Inc.*, 907 F.2d 765, 769 (7th Cir. 1990); *Sound One Corp.*, 317 NLRB 854, 858 (1995); *Aluminum Technical Extrusions*, 274 NLRB 1414, 1418 (1985). The hurried manner in which Vincer was terminated reveals that he was treated disparately in comparison to other employees. *Naomi Knitting Plant*, 328 NLRB 1279, 1283 (1999). Moreover, the Respondent failed to prove by a preponderance of the evidence that it would have discharged Vincer in the absence of his protected concerted conduct. Facing a likely economic downturn, the Respondent did have some hard decisions to make – keep the business running but downsize in order to apply for the amount of PPP program relief that it believed would accurately reflect its

payroll. In the absence of documentary or other reliable evidence, however, there is no way to determine how Vincer's production compared to other employees.

#### CONCLUSIONS OF LAW

1. The Respondent, Miller Plastic Products, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. By discharging employee Ronald Vincer, the Respondent has engaged in an unfair labor practices within the meaning of Section 8(a)(1) of the Act.

3. The unfair labor practices of the Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(1) by discharging Ronald Vincer because he engaged in protected concerted conduct, the Respondent shall be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent shall be ordered to offer Vincer reinstatement to his prior position and make him whole for any loss of earnings and other benefits incurred as a result of his unlawful termination. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). In accordance with *King Soopers, Inc.*, 364 NLRB No. 93 (2016), enfd. in relevant part 859 F.3d 23 (D.C. Cir. 2017), the Respondent shall also compensate Vincer for his reasonable search-for work and interim employment expenses, if any, regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

Additionally the Respondent shall compensate Ronald Vincer for the adverse tax consequences, if any, of receiving lump-sum backpay awards, in accordance with *Tortillas Don Chavas*, 361 NLRB 101 (2014), and file with the Regional Director for Region 21, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year for each affected employee in *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016). The Regional Director will then assume responsibility for transmission of the report to the Social Security Administration at the appropriate time and in the appropriate manner. In addition, pursuant to *Cascades Containerboard Packaging*, 370 NLRB No. 76 (2021), the Respondent will file with the Regional Director for Region 21 a copy of each backpay recipient's corresponding W-2 form(s) reflecting the backpay award.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>27</sup>

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## ORDER

The Respondent, Miller Plastic Products, Inc., its officers, agents, successors, and assigns, shall

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## 1. Cease and desist from

(a) Discharging or otherwise discriminating against employees because they engage in protected concerted conduct.

15

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed them by Section 7 of the Act.

## 2. Take the following affirmative action necessary to effectuate the policies of the Act.

20

(a) Within 14 days from the date of the Board's Order, offer Ronald Vincer full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

25

(b) Make Ronald Vincer whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of the decision.

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(c) Compensate Ronald Vincer for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 21, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar year for each employee.

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(d) Within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of backpay recipient's corresponding W-2 forms reflecting the backpay award.

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(e) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges of Ronald Vincer, and within 3 days thereafter, notify the employee in writing that this has been done and that the discharge will not be used against him in any way.

## (f) Preserve and, within 14 days of a request, or such additional time as the Regional

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<sup>27</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its facility in Burgettstown, Pennsylvania copies of the attached notice marked "Appendix."<sup>28</sup> Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 24, 2020.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated: Washington, D.C. May 27, 2022




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Michael A. Rosas  
Administrative Law Judge

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<sup>28</sup> If the facilities are open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO EMPLOYEES

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities.

**WE WILL NOT** discharge or otherwise discriminate against any of you for engaging in protected concerted activities.

**WE WILL** not discipline, suspend or terminate you because you bring issues, health and safety concerns, or complaints to us on behalf of yourself and other employees.

**WE WILL NOT** in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

**WE WILL** make Ronald Vincer whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest compounded daily.

**WE WILL** file a report with the Social Security Administration allocating backpay to the appropriate calendar quarters.

**WE WILL** compensate Ronald Vincer for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1 year.

**WE WILL** file a report with the Social Security Administration allocating backpay to the appropriate years.

**WE WILL**, within 14 days from the date of this Order, remove from our files any reference to the unlawful discharge of Ronald Vincer, and **WE WILL**, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

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MILLER PLASTIC PRODUCTS, INC.

(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov)

William S. Moorhead Federal Building, Room 904, Pittsburgh, PA 15222-4111  
(412) 395-4400, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at [www.nlr.gov/case/06-CA-266234](http://www.nlr.gov/case/06-CA-266234) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**  
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE  
DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY  
OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE  
WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S  
COMPLIANCE OFFICER (412) 690-7117.